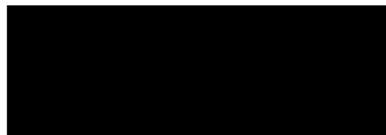


STATE OF MAINE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
11 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0011

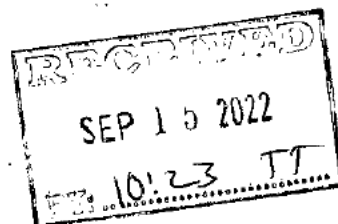
Administrative Hearings

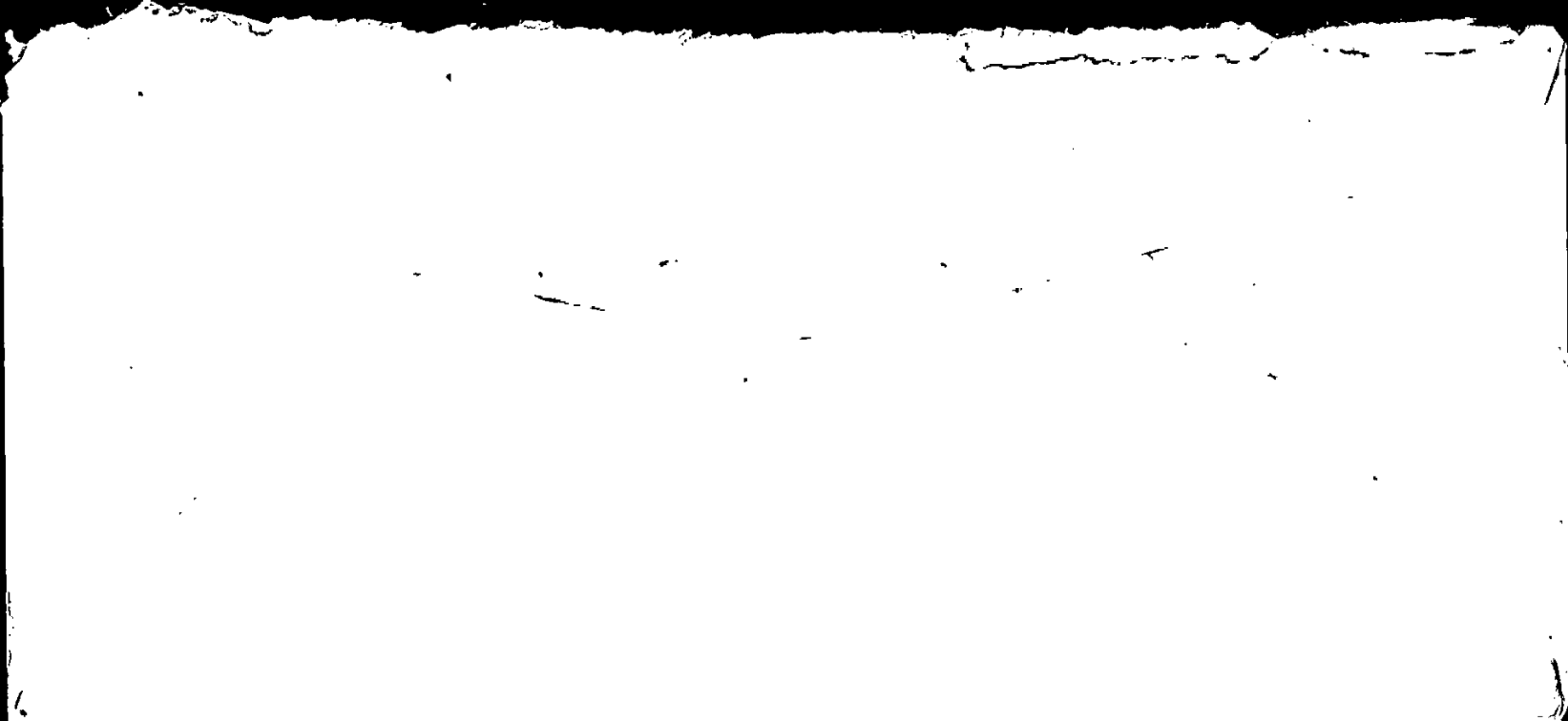


US POSTAGE KEY BOWES



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Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner

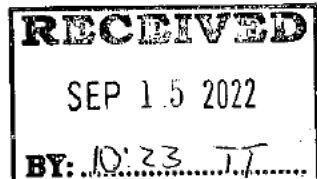


Maine Department of Health and Human Services
Administrative Hearings
11 State House Station
109 Capitol Street
Augusta, Maine 04333-0011
Tel.: (207) 624-5350; Fax: (207) 287-8448
TTY: Dial 711 (Maine Relay)

DATE MAILED: 9/13/22

Marketplace Exchange Number: [REDACTED]

To: [REDACTED]



MARKETPLACE ELIGIBILITY APPEAL FINAL DECISION

On August 4, 2022, Hearing Officer Jeremiah Haley, held a *de novo* administrative hearing by telephone in the case of the Appellant. By special appointment, the Commissioner of the Department of Health and Human Services conferred jurisdiction to the Hearing Officer. The record was kept open to allow the parties to provide written closing arguments. The record closed on August 15, 2022.

FACTUAL BACKGROUND AND ISSUE:

This Decision is rendered pursuant to the Made for Maine Health Coverage Act (22 M.R.S. chapter 1479) and 45 CFR §§ 155.300-355. The Hearing Officer considered the information used in the Appellant's Marketplace Eligibility Determination, as well as any additional relevant evidence presented during the eligibility appeal. The Hearing Officer also considered certain federal regulations which are, by law, required to be applied to this matter.

Appellant had previously received health insurance through the Federally Facilitated Marketplace. [REDACTED] file was imported to the Maine Health Insurance Marketplace ("Maine Marketplace" or "CoverME") in October 2021. By notice dated October 26, 2021, Appellant was advised that [REDACTED] health insurance had been renewed and was given steps regarding how to complete [REDACTED] enrollment. Appellant was informed that based upon [REDACTED] likely eligibility for MaineCare, [REDACTED] did not qualify for Advanced Premium Tax Credits. In January 2022, Appellant cancelled [REDACTED] coverage through the Maine Marketplace.

In April 2022, Appellant again applied for health insurance on the Maine Health Insurance Marketplace. By notice dated April 14, 2022, Appellant was advised that [REDACTED] qualified for a plan on the Maine Marketplace, and was likely eligible for Advanced Premium Tax Credits, effective May 1, 2022. Appellant was provided instructions to determine if [REDACTED] was eligible for a Special Enrollment Period. Through a series of phone calls with representatives of the Maine Marketplace, it was determined that Appellant was not eligible for a Special Enrollment Period.

On or about June 13, 2022, the Appellant appealed. On July 6, 2022, a notice of hearing for August 4, 2022 was sent to the Appellant. The issue before the Hearing Officer is:

Was the Department correct when it denied Appellant's application under the Special Enrollment Period (SEP)?

APPEARING ON BEHALF OF APPELLANT:

[REDACTED]

APPEARING ON BEHALF OF AGENCY:

Megan Garratt-Reed, Office of the Health Insurance Marketplace

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer Exhibits:

- HO-1. Notice of Hearing dated July 6, 2022
- HO-2. Fair Hearing Report Form dated June 22, 2022
- HO-3. Appeal Request of Appellant

Department Exhibits:

- D-1. Applications Submitted by Appellant
- D-2. Notices Sent to Appellant
- D-3. May 26, 2022 Telephone Recording
- D-4. Relevant Regulatory Documents
- D-5. January 18, 2022 Telephone Recording
- D-6. Case History

Appellant Exhibits:

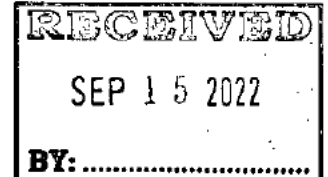
- A-1. April 22, 2022 Telephone Recordings
- A-2. Additional Telephone Recordings

DECISION:

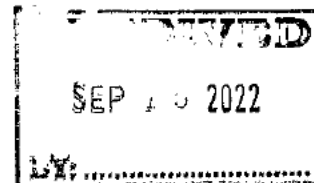
The Department's eligibility determination is AFFIRMED.

FINDINGS OF FACT:

1. Notice of these proceedings was given in a timely and adequate manner. The Appellant made a timely appeal.
2. Appellant was [REDACTED] years old when Appellant applied for the Qualified Health Plan.
3. Appellant lives in [REDACTED].
4. The Appellant is a part of a one-person household, eligible to enroll in a Qualified Health Plan as of May 1, 2022.



5. Based upon ■ most recent reported income of \$28,536.00 Appellant meets the financial and non-financial requirements to qualify for subsidies in the form of an Advanced Premium Tax Credit to help pay the costs of the Qualified Health Plan.
6. Appellant does not qualify for a Special Enrollment Period.



REASON FOR DECISION:

The record reflects the following events, which are largely agreed to by both parties. On or about October 1, 2021 Appellant's application was imported to the Maine Marketplace from the Federally Facilitated Marketplace. See Exhibit D-6. At that time, a notice was generated, welcoming Appellant to CoverME.gov. See Exhibit D-2. On or about October 17, 2021, Appellant's application was processed. See Exhibit D-1. At such time, Appellant was assessed as eligible for MaineCare, based upon reported annual income of \$15,606.00. This income was 114.83% of the Federal Poverty Level.

On or about October 20, 2021, Appellant was notified that ■ needed to update ■ application. See Exhibit D-2. A subsequent notice was sent on or about October 26, 2021. Id. This notice informed Appellant that ■ renewed plan would be the "Anthem Silver X Clear Choice Tiered 3500" plan provided through Anthem Blue Cross and Blue Shield. Id. ■ premium under ■ renewed plan would be \$827.31 per month, and ■ annual deductible would be \$3,500.00. Id. This premium did not include any applied APTC, because Appellant was determined to be MaineCare eligible. Id.

Next, Appellant was sent notice on or about December 24, 2021 regarding the details of ■ renewed plan, including the amount of ■ premium. Id. On or about January 14, 2022, Appellant submitted a new application for a healthcare plan. See Exhibit D-1. At this time, Appellant reported negative annual income, in the amount of -\$2,313.00. Id. Appellant was again assessed as likely eligible for MaineCare. See Exhibit D-2.

On January 15, 2022, the Open Enrollment period ended. On or about January 18, 2022, Appellant called the Consumer Assistance Center. This call was recorded and was admitted into the record as Exhibit D-5. Therein, Appellant states that ■ terminated ■ insurance coverage. Id. On the call, ■ was told that the reason ■ premium increased significantly from 2021 to 2022 was because ■ was assessed as eligible for MaineCare. Id.

The record is unclear regarding what steps each party took regarding Appellant's health insurance coverage from January 18, 2022 until April 2022. At some point, Appellant became covered under MaineCare. See Testimony of Appellant. On or about April 13, 2022, Appellant again called consumer assistance. Id. Internally, CoverME opened a case for Appellant, identified as "Case 58403". See Id.; see also Exhibit D-6. During this call, ■ reiterated that ■ had voluntarily terminated ■ coverage through the exchange and requested a Special Enrollment Period because ■ income was below 150% of the federal poverty level. Id. The following day – April 14, 2022 – consumer assistance unsuccessfully attempted to contact Appellant. Id.

Later on April 14, 2022, Appellant returned a call to consumer assistance. Id. For reasons not entirely clear, CoverME opened a separate case, identified as Case 58584. Id. As a result of

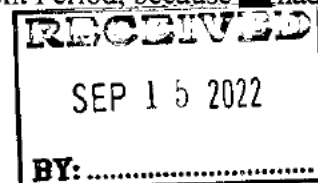
Appellant's phone call, [REDACTED] case was "escalated" to determine whether [REDACTED] was eligible for a Special Enrollment Period. Id. Appellant submitted a new application on the exchange, reporting income of \$28,536.00. See Exhibit D-1. This income is 210% of the federal poverty guideline. Id. Appellant was determined to be eligible for a premium tax credit, which was reflected in a notice generated on or about April 14, 2022. See Exhibit D-2. Therein, Appellant was notified that [REDACTED] was eligible for an Advance Premium Tax Credit of \$731.00 per month, effective May 1, 2022. Id. This notice also stated that Appellant should follow the following steps:

Login to your account at www.CoverME.gov to shop for a plan, change plans, or add someone to your plan. We'll need to ask you a few questions to see if you qualify to sign up or make changes now, even though it isn't open enrollment, or if you must wait until the next open enrollment. ... Open enrollment for 2022 ended on January 15, 2022. Those who qualify can only enroll in a plan now if someone in your household had a recent life change. Getting married, having a baby, or losing other health coverage are just a few examples of recent life changes that may qualify for a Special Enrollment Period. ... If you qualify, there's limited time to sign up.

On April 15, 2022, Case 58403 was closed internally. See Exhibit D-6. On or about April 21, 2022, CoverME internally determined that because Appellant did not have active coverage, [REDACTED] did not qualify for a "Newly Eligible for APTC" qualifying life event. Id. On April 22, 2022, consumer assistance called Appellant but was unable to reach [REDACTED]. Id. [REDACTED] called consumer assistance back later that day. Id. Internally Appellant was assigned yet another case number, Case 59706. During the April 22, 2022 telephone call, Appellant was asked for [REDACTED] MaineCare denial date. Id. [REDACTED] replied that [REDACTED] was unsure of such date. Id. [REDACTED] was referred by consumer assistance to the Maine Office for Family Independence. Id. Appellant followed up with consumer assistance later that day and reported that the date of MaineCare denial was May 31, 2022. Id. As part of this phone call, Appellant's case was assigned yet another new case number, Case 59737. Appellant's application was updated, and case 58584 was re-escalated. Id.

As a result of this re-escalation, Appellant's application was updated. A notice was generated on April 22, 2022, determining once again that Appellant was entitled to a premium tax credit, and once again noting the steps [REDACTED] must follow to enroll. See Exhibit D-2. Also on April 22, 2022, Case 58584 was placed in "outreach status" to clarify Appellant's MaineCare status, as the denial date [REDACTED] reported was in the future. See Exhibit D-6. On April 25, 2022, consumer assistance spoke with Appellant, who clarified that [REDACTED] had active MaineCare coverage until May 31, 2022. See Exhibit A-2. At that time, Appellant requested a Special Enrollment Period to enroll in CoverMe.gov coverage. See Id.; see also Exhibit D-6.

On or about May 19, 2022, the Department determined that Appellant was not eligible for a Special Enrollment Period based upon being "newly eligible for APTC". See Exhibit D-6. Attempts to reach Appellant on May 19, 2022 were unsuccessful. Id. On May 20, 2022, consumer assistance informed Appellant of CoverME's determination. Id. Appellant sought eligibility under a separate Special Enrollment Period qualifying event, "loss of minimum essential coverage". Id. On May 24, 2022 consumer assistance again spoke with Appellant and was told that [REDACTED] was ineligible for a "loss of minimum essential coverage" Special Enrollment Period, because [REDACTED] had



voluntarily terminated [REDACTED] coverage. Appellant requested an appeal during this phone call, stating that [REDACTED] had been provided with misinformation related to [REDACTED] eligibility. See Id.; see also Exhibit A-2.

On May 25, 2022, Appellant was contacted by “leadership” from CoverME about [REDACTED] application to clarify whether [REDACTED] denial of MaineCare was voluntary or involuntary. See Exhibit D-6. Appellant stated that [REDACTED] had voluntarily cancelled [REDACTED] coverage. On May 26, 2022, Appellant was again contacted by “leadership”. See Exhibit D-3. During this conversation, CoverME stated that there was no evidence that Appellant had been advised by CoverME that [REDACTED] should terminate [REDACTED] coverage. Id. Appellant clarified that [REDACTED] had not been advised to terminate coverage, but that [REDACTED] understanding of the situation was that termination was [REDACTED] best option. Id. [REDACTED] confirmed again that [REDACTED] termination of coverage was voluntary. Id. [REDACTED] further stated that [REDACTED] wished to continue [REDACTED] appeal. Id.

On or about June 6, 2022, Appellant called consumer assistance to seek guidance regarding the appeal process. See Exhibit A-2. On or about June 13, 2022, Appellant’s appeal was received by CoverME. See Exhibit D-6; see also Exhibit HO-2. Therein, Appellant indicated that [REDACTED] wished to appeal both the “Special Enrollment Period (SEP) Denial” and “Enrollment Denial (Not eligible to buy a Marketplace plan through CoverME.gov)”.

Appellant desires the following: healthcare coverage, purchased through the exchange, subsidized through a premium tax credit, despite being eligible for MaineCare. This desired outcome is not possible under the current regulatory and legal structure.

Denial Advanced Premium Tax Credits

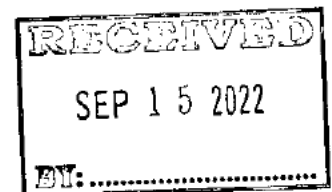
The first issue addressed by the parties at hearing was the denial of Advanced Premium Tax Credits during the initial enrollment period¹. By notice dated January 15, 2022, Appellant was informed:

[Appellant] qualifies to purchase marketplace health insurance through CoverME.gov. People who likely qualify for MaineCare or Cub Care also have the option to purchase marketplace health insurance at full price, even though MaineCare or Cub Care offers comprehensive health coverage with no monthly premium.

This notice stated that Appellant did “not qualify for an advance premium tax credit to help pay for marketplace health insurance because this person is likely eligible for MaineCare or Cub Care”.

26 CFR §1.36B-22(a) states:

§ 1.36B-2 Eligibility for premium tax credit.



¹ This issue was not a basis for Appellant’s appeal but is discussed here to better understand the context of Appellant’s present appeal.

(a) In general. An applicable taxpayer (within the meaning of paragraph (b) of this section) is allowed a premium assistance amount only for any month that one or more members of the applicable taxpayer's family (the applicable taxpayer or the applicable taxpayer's spouse or dependent) -

(1) Is enrolled in one or more qualified health plans through an Exchange; and

(2) Is not eligible for minimum essential coverage (within the meaning of paragraph (c) of this section) other than coverage described in section 5000A(f)(1)(C) (relating to coverage in the individual market).

Accordingly, if Appellant qualifies for "minimum essential coverage", ■ is not eligible for a premium tax credit. 26 CFR 1.36B 2(c) states "government-sponsored programs, eligible employer-sponsored plans, grandfathered health plans, and certain other health benefits coverage are minimum essential coverage". As Ms. Garratt-Reed testified, MaineCare qualifies as minimum essential coverage. Because Appellant was eligible for MaineCare, ■ was not eligible for a premium tax credit.

Appellant attempted to circumvent this regulation by attempting to make ■ ineligible for MaineCare. ■ did this by canceling ■ MaineCare coverage, and by not providing documents supporting ■ reported income. However, federal regulations contemplate such a scenario. 26 CFR 1.36B 2(c)(ii) states: "An individual who meets the criteria for eligibility for government-sponsored minimum essential coverage must complete the requirements necessary to receive benefits."

Because Appellant did not appeal this determination, it is the law of the case.

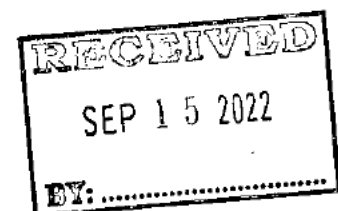
Medicaid Denial Following Open Enrollment:

45 CFR §155.420 sets forth the requirements for Special Enrollment Periods. Appellant was assessed for a Special Enrollment Period based upon a triggering event of being denied Medicaid (in this case, MaineCare) following the open enrollment period.

45 CFR §155.420(d)(11) allows for a Special Enrollment Period under the following circumstances:

(11) A qualified individual or dependent -

(i) Applies for coverage on the Exchange during the annual open enrollment period or due to a qualifying event, is assessed by the Exchange as potentially eligible for Medicaid or the Children's Health Insurance Program (CHIP), and is determined ineligible for Medicaid or CHIP by the State Medicaid or CHIP agency either after open enrollment has ended or more than 60 days after the qualifying event; or



(ii) Applies for coverage at the State Medicaid or CHIP agency during the annual open enrollment period, and is determined ineligible for Medicaid or CHIP after open enrollment has ended

Here, Appellant was assessed as potentially eligible for MaineCare, as reflected in the notices sent on or about October 21, 2021, December 24, 2021 and January 15, 2022. See Exhibit D-2. Appellant testified that ■

However, at no time was Appellant “determined ineligible for Medicaid or CHIP by the State Medicaid or CHIP agency”. As noted above, Appellant purposefully unenrolled ■ from MaineCare coverage. ■ declined to provide necessary documents. ■ MaineCare was administratively terminated for these reasons. This is not the same as a determination of ineligibility. See 26 CFR 1.36B 2(c)(ii).

Special Enrollment Period – New eligibility for APTC:

Appellant claims that ■ is eligible for special enrollment because as of May 1, 2022, ■ was newly eligible for Advanced Premium Tax Credits.

45 CFR §155.420(d)(6) states:

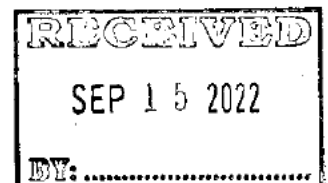
(d) Triggering events. Subject to paragraphs (a)(3) through (5) of this section, as applicable, the Exchange must allow a qualified individual or enrollee, and, when specified below, his or her dependent, to enroll in or change from one QHP to another if one of the triggering events occur:

(6) Newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.

(i) The enrollee is determined newly eligible or newly ineligible for advance payments of the premium tax credit or has a change in eligibility for cost-sharing reductions;

(ii) The enrollee's dependent enrolled in the same QHP is determined newly eligible or newly ineligible for advance payments of the premium tax credit or has a change in eligibility for cost-sharing reductions;

(iii) A qualified individual or his or her dependent who is enrolled in an eligible employer-sponsored plan is determined newly eligible for advance payments of the premium tax credit based in part on a finding that such individual is ineligible for qualifying coverage in an eligible-employer sponsored plan in accordance with 26 CFR 1.36B-2(c)(3), including as a result of his or her employer discontinuing or changing available coverage within the next 60 days, provided that such individual is allowed to terminate existing coverage;



(iv) A qualified individual who was previously ineligible for advance payments of the premium tax credit solely because of a household income below 100 percent of the FPL and who, during the same timeframe, was ineligible for Medicaid because he or she was living in a non-Medicaid expansion State, who either experiences a change in household income or moves to a different State resulting in the qualified individual becoming newly eligible for advance payments of the premium tax credit; or

(v) At the option of the Exchange, the qualified individual, or his or her dependent

(A) Experiences a decrease in household income;

(B) Is newly determined eligible by the Exchange for advance payments of the premium tax credit; and

(C) Had minimum essential coverage as described in 26 CFR 1.5000A-1(b) for one or more days during the 60 days preceding the date of the financial change.

The Department argues that Appellant is not eligible under any of the criteria set forth above. This Hearing Officer agrees. Subparagraphs (i) and (ii) apply specifically to "enrollees". This term has a specific meaning under the relevant regulations. "Enrollee" is defined as "a qualified individual or qualified employee enrolled in a QHP²." Because Appellant was not enrolled in a QHP, ■ is not an "enrollee". Appellant does not qualify under subparagraphs (iii) because ■ was not enrolled in an eligible employer-sponsored plan. Subparagraph (iv) does not apply for several reasons, including that Maine is not a "non-Medicaid expansion State". Lastly, subparagraph (v) does not apply because there has been no showing that Appellant became eligible for advance payments of the premium tax credits in relation to an experienced decrease in income. Indeed, Appellant's applications purportedly show an increase in income between January 2022 and April 2022.

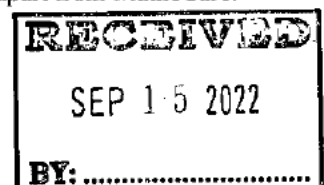
Loss of Minimum Essential Coverage:

Appellant claims that ■ was eligible for a Special Enrollment Period due to loss of minimum essential coverage. Appellant argues that ■ lost ■ MaineCare coverage, and accordingly, should be allowed to enroll during a Special Enrollment Period.

The relevant federal regulations are found at 45 CFR §155.420(d)(1)(i) and 45 §CFR 155.420(e). 45 CFR §155.420(d)(1)(i) states that a triggering event occurs when a qualified individual or ■ dependent "[l]oses minimum essential coverage". However, 45 §CFR 155.420(e) makes clear that loss of coverage "does not include voluntary termination of coverage."

As noted above, it is clear to this Hearing Officer that Appellant attempted to purposefully make ■ ineligible for MaineCare. In doing so, ■ voluntarily cancelled MaineCare coverage. Doing so does not make ■ eligible for a Special Enrollment Period.

² Qualified Health Plan. Such plans are offered through an Exchange and are separate and apart from MaineCare.



Income Below 150% of the Federal Poverty Level

45 CFR §155.420(d)(16) states:

At the option of the Exchange, a qualified individual or enrollee, or the dependent of a qualified individual or enrollee, who is eligible for advance payments of the premium tax credit, and whose household income, as defined in 26 CFR 1.36B-1(e), is expected to be no greater than 150 percent of the Federal poverty level, may enroll in a QHP or change from one QHP to another one time per month during periods of time when the applicable taxpayer's applicable percentage for purposes of calculating the premium assistance amount, as defined in section 36B(b)(3)(A) of the Internal Revenue Code, is set at zero.

CoverME assessed Appellant's eligibility under 45 CFR §155.420(d)(16). Ms. Garratt-Reed testified that Appellant does not qualify under this Special Enrollment Period because at no time was ■ both eligible for Advanced Premium Tax Credits while having an income of below 150% of the poverty level.

As noted above, at the time of the January 15, 2022 determination, Appellant was not eligible for an Advanced Premium Tax Credit because ■ was eligible for MaineCare. Thus, although ■ was below 150% of the Federal Poverty Guidelines, ■ did not qualify for a Special Enrollment Period because ■ was not "eligible for advance payments of the premium tax credit."

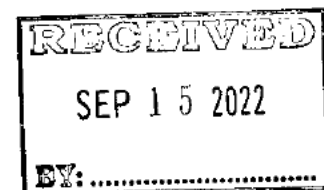
On or about April 22, 2022, Appellant did become eligible for such tax credits. However, this was based upon reported income of \$28,536.00. This income exceeds 150% of the Federal Poverty Level, and therefore makes Appellant ineligible for this Special Enrollment Period.

Plan Error:

While neither party presented evidence related to alleged plan errors at hearing, in ■ closing argument, Appellant argues "I believe that I do qualify for special enrollment due to 'Plan Error' when my Anthem policy transferred over to CoverME.gov at a much higher premium". Presumably Appellant is referring to 45 CFR §155.420(d)(4), which states that there can be a triggering event for purposes of a Special Enrollment Period if:

(4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of the Exchange or HHS, its instrumentalities, or a non-Exchange entity providing enrollment assistance or conducting enrollment activities. For purposes of this provision, misconduct includes the failure to comply with applicable standards under this part, part 156 of this subchapter, or other applicable Federal or State laws as determined by the Exchange.

Appellant has not shown that ■ enrollment or non-enrollment was in any way unintentional, inadvertent or erroneous. Moreover, there has been no showing of error, misrepresentation,



misconduct or inaction by the Department. Appellant was provided with a quote regarding the Anthem Blue Cross and Blue Shield plan that ■ wanted to be enrolled in. There is no evidence that the cited premium was due to an error. Rather, it was an accurate premium with the premium tax credits applied. These tax credits were not applied because, as explained above, Appellant was not eligible for them due to MaineCare eligibility. Appellant cancelled ■ coverages, both through the Department and via MaineCare, knowingly and voluntarily, and was not misled in any way.

CONCLUSIONS OF LAW

1. The Department complied with the applicable law. 26 USCA § 36B, 26 USCA § 1.36 B, 42 USCA § 300gg, 42 USCA § 18022, and 42 USCA § 18071.
2. You are not qualified for a Special Enrollment Period.

EXPLANATION OF THE RIGHT TO PURSUE AN APPEAL

If you remain dissatisfied with this determination, **within 30 days of the decision mailing date listed above** you may:

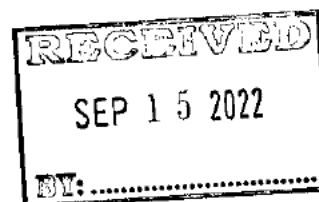
File an appeal with the United States Department of Health and Human Services (HHS) Market Place Appeals Center. See 42 U.S.C. § 18081(f); 45 C.F.R. § 155.520(c). You can only file appeals to HHS of decisions involving eligibility for qualified health plans, advanced premium tax credits, and cost-sharing reductions. To file an appeal with HHS, you can:

- Visit [HealthCare.gov/marketplace-appeals](https://www.healthcare.gov/marketplace-appeals); or
- Write a letter requesting an appeal. Include your name, address, and the reason you are requesting the appeal. If you are requesting an appeal for someone else (like your child), also include their name.

Then fax your appeal request to a secure fax line: 1-877-369-0130, or mail it to:

Health Insurance Marketplace
ATTN: Appeals
465 Industrial Blvd.
London, KY 40750-0061

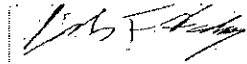
THE INFORMATION CONTAINED IN THIS DECISION IS CONFIDENTIAL. See, e.g., 42 U.S.C. section 1396a(a)(7), 22 M.R.S.A. section 42(2) and section 1828(1)(A), 42 C.F.R.



section 431.304, MaineCare Benefits Manual, Ch.1, sec. 1.03-5. ANY UNAUTHORIZED DISCLOSURE OR DISTRIBUTION IS PROHIBITED.

DATED: September 12, 2022

SIGNED: _____



Jeremiah F. Haley
Administrative Hearing Officer
Division of Administrative Hearings

cc: Megan Garratt-Reed, Office of the Health Insurance Marketplace

